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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,502	12/05/2003	Richard Charles Dougherty	A01480	9117

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ROHM AND HAAS COMPANY
PATENT DEPARTMENT
100 INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106-2399

EXAMINER	
MRUK, BRIAN P	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/728,502	DOUGHERTY, RICHARD CHARLES	
	Examiner	Art Unit	
	Brian P. Mruk	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 July 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *7/22/04 & 6/21/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-7 are rejected under 35 U.S.C. 102(a) as being anticipated by Guo et al, EP 1219702.

Guo et al, EP 1219702, discloses a multifunctional granulated pellet aid made by introducing 20-80% by weight of emulsion polymers having a glass transition temperature ranging from –20 to +95 degrees Celsius, spraying the emulsion polymer on to 0-40% by weight of inorganic solids and 10-40% by weight of organic solids, and compacting the pellet aid to form pellets having a particle size of 100-3000 micrometers (see abstract and page 3, lines 2-19), per the requirements of the instant invention. It is further taught by Guo et al that preferred polymers include one or more homopolymers or copolymer selected from acrylic acid and methacrylic acid (see page 3, line 44-page 4, line 48). Specifically, note the Examples in Tables 1-6. Therefore, instant claims 1-7 are anticipated by Guo et al, EP 1219702.

3. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Guo et al, U.S. Patent No. 6,492,320.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Guo et al, U.S. Patent No. 6,492,320, discloses a multifunctional granulated pellet aid made by introducing 20-80% by weight of emulsion polymers having a glass transition temperature ranging from –20 to +95 degrees Celsius, spraying the emulsion

polymer on to 0-40% by weight of inorganic solids and 10-40% by weight of organic solids, and compacting the pellet aid to form pellets having a particle size of 100-3000 micrometers (see abstract and col. 2, line 34-col. 3, line 14), per the requirements of the instant invention. It is further taught by Guo et al that preferred polymers include one or more homopolymers or copolymer selected from acrylic acid and methacrylic acid (see col. 3, line 56-col. 4, line 64). Specifically, note the Examples in Tables 1-6. Therefore, instant claims 1-7 are anticipated by Guo et al, U.S. Patent No. 6,492,320.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-15 of U.S. Patent No. 6,492,320. Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6,492,320 claims a similar

multifunctional granulated pellet aid made by introducing 20-80% by weight of an acrylic emulsion polymer having a glass transition temperature ranging from –20 to +95 degrees Celsius, spraying the emulsion polymer on to 0-40% by weight of inorganic solids and 10-40% by weight of organic solids, and compacting the pellet aid to form pellets having a particle size of 100-3000 micrometers (see claims 10-15 of U.S. Patent No. 6,492,320), as required by applicant in instant claims 1-7. Therefore, claims 1-7 of the instant invention are an obvious formulation in view of claims 15-20 of U.S. Patent No. 6,492,320.

6. Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/728,524. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/728,524 claims a similar process for manufacturing a polymer granule comprising introducing 20-80% by weight of a neutralized (meth)acrylic emulsion polymer having a glass transition temperature ranging from –20 to +250 degrees Celsius, spraying the emulsion polymer on to 0-40% by weight of inorganic and/or organic solids, and compacting the pellet aid to form pellets having a particle size of 100-3000 micrometers and a bulk density greater than 500 grams per liter (see claims 1-9 of copending Application No. 10/728,524), as required by applicant in instant claims 1-7. Therefore, claims 1-7 of the instant invention are an obvious formulation in view of claims 1-9 of copending Application No. 10/728,524.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM
Brian Mruk
June 2, 2005

Brian P. Mruk
Brian P. Mruk
Primary Examiner
Tech Center 1700